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10/569,003

12/19/2007

Douglas B. Slomski

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02/04/2010

HUSCH BLACKWELL SANDERS LLP

190 CARONDELET PLAZA

SUITE 600

ST. LOUIS, MO 63105-3441

EXAMINER

DURAND, PAUL R

ART UNIT

PAPER NUMBER

3721

NOTIFICATION DATE

DELIVERY MODE

02/04/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto-sl@huschblackwell.com

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/569,003 | Applicant(s) SLOMSKI ET AL. | |
| | Examiner PAUL R. DURAND | Art Unit 3721 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 23-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 9-17, 20, 21 and 34-38 is/are rejected.
- 7) ☒ Claim(s) 5, 8, 18, 19 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>2/20/06, 9/26/07, 11/25/08</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's arguments regarding previously unaddressed claims 34-38 and election without traverse of claims 1-22 and 34-38 in the reply filed on 10/7/2009 is acknowledged and persuasive.

Claims 23-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6, 9-15, 17, 20, 21 and 34-38 rejected under 35 U.S.C. 103(a) as being unpatentable over McGowan Jr. (US 2002/0119074) in view of Rausing (US 4,014,158).

In claims 1 and 11, McGowan discloses the invention as claimed including product conveying means 120 for incrementally conveying product, means for enclosing the products in a web package in a series of spaced intervals comprised of forming device 320 and web sealing station 410, conveying system (no number, but shown in figure 1) and sterilization section 130, which sterilizes the package at a steady rate (see figures 1, 3 and para. 0034, 0037).

What McGowan does not disclose is the use of an irradiation device to sterilize the package. However, Rausing teaches that it is old and well known in the art of packaging to utilize irradiation means 25, enclosed in chamber 4 for the purpose of sterilizing a web of material prior to packaging (see figure 1 and col. 3, lines 7-38).

Therefore, it would have been obvious to having ordinary skill in the art at the time they invention was made to have provided the invention of McGowan with the irradiation means as taught by Rausing for the purpose of sterilizing a web of material.

In claims 2, 4 and 17, McGowan discloses the invention as claimed including forming a web of material 412 into receiving packages 417, while being conveyed on conveyors 170, with an entry region, an exit region and a buffer region located between the stations in a linear manner.

In claims 3 and 15, McGowan discloses the invention as claimed including sealing station 410, supply roll 330, sealing die 424 and thermoseal element 436 (see figure 5 and para. 0073-0074).

In claim 6, McGowan discloses the invention as claimed including the conveying means further comprises an index conveyor wherein said discrete packages are moved from a first position to a second position in a series of spaced intervals having a cyclical rate and wherein said routing means comprises a continuous speed conveyor wherein said discrete packages move through said irradiation chamber at a steady rate.

In claims 9, 10 and 20, McGowan discloses the invention as claimed including the conveying means further moving in a continuous, steady state manner and the

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discrete packages traverse said irradiation chamber in a single layer array and remain connected by said web enclosure through said circuitous path

In claims 12, 13 and 21, McGowan discloses the invention as claimed including utilizing a web 330, which connects discrete packaging member 417 and subsequent severing into individual packages inside the sterilization chamber (see para. 0041).

In claim 14, McGowan discloses the invention as claimed including the conveying means is comprised of a package forming station 320, where a packaging material web is molded into an array of packages, a product filling station 120, where the stream of products is deposited into said array of packages, and an indexed conveyor operatively connecting said package forming station and said product filling station with the enclosing means.

In claim 34, McGowan discloses the invention as claimed including conveying a stream of products from a first position to a second position in a series of spaced intervals at station 120, sequentially enclosing the products into a plurality of discrete packages 417, during said series of spaced intervals, routing said discrete packages through a sterilization chamber at a steady rate corresponding with the incremental movement of said conveying means.

What McGowan does not disclose is the use of an irradiation device to sterilize the package. However, Rausing teaches that it is old and well known in the art of packaging to utilize irradiation means 25, enclosed in chamber 4 for the purpose of sterilizing a web of material prior to packaging (see figure 1 and col. 3, lines 7-38).

Therefore, it would have been obvious to having ordinary skill in the art at the time they invention was made to have provided the invention of McGowan with the irradiation means as taught by Rausing for the purpose of sterilizing a web of material.

In claims 35 and 36, McGowan discloses the invention as claimed including the enclosing step is further comprised of connecting said discrete packages with a web enclosure 330, where the discrete packages remain connected by said web enclosure during said routing step.

In claim 37, McGowan discloses the invention as claimed including separating the packaged after they leave the sterilization chamber. What McGowan does not disclose is the severing of the packages prior to entering the sterilization chamber. However, the examiner asserts that it is an obvious matter of design choice to sever the packages prior to entering a manufacturing module in lieu of severing the packages subsequent to entering the module.

4. Claims 7, 16 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGowan and Rausing in view of Buckho et al. (US 5,170,611).

The modified invention of McGowan discloses the invention as claimed except for the use of a controller to control the synchronized operation of the device. However, Buckho teaches that it is old and well known in the art of packaging to provide a packaging machine with a controller for the purpose of synchronizing the operation of the various modules (see figures 8, 9 and col. 11, lines 16-50).

Therefore, it would have been obvious to having ordinary skill in the art at the time they invention was made to have provided the modified invention of McGowan with

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the controller means as taught by Buckho for the purpose of synchronizing the operation of the various modules.

Allowable Subject Matter

5. Claims 5, 8, 18, 19 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL R. DURAND whose telephone number is (571)272-4459. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAUL R. DURAND/
Primary Examiner, Art Unit 3721
February 2, 2010